

## REMARKS

Applicants thank Examiner James A. Thompson for having allowed all the claims except 3, 4 and 36. Those three claims have now been canceled.

Applicants also thank Supervisory Examiner David Moore for having clarified, in Examiner Thompson's absence, the requirements for submission of previously omitted European references now.

### European references mentioned in the IDS

Attached are the three European patent documents listed in Applicants' October 2007 Information Disclosure Statement. The Applicant apologize for having omitted these documents initially. Applicants understand from Supervisory Examiner Moore that a new IDS and fee are required for presentation of these documents now, and such IDS and fee are provided herewith.

### Comments on Statement of Reasons for Allowance

Applicants appreciate the Examiner's evenhanded effort to cover the complex issues of this case in his brief statement, which appears at page 4 (in section 7 thereon) of the November Official Action. Applicants believe that the statement — al-

though not reciting the Applicants' claim language verbatim — represents the Applicants' claims sufficiently well for present purposes.

#### The presumption of validity

In the November 23, Official Action it is said (emphasis added):

"Applicant's arguments in response to an Office action on Applicant's arguments on Applicant's application do not alter [the] presumption [of validity] since the validity or invalidity of any claim of an issued U.S. Patent is to be determined" by reissue exam, reexam, interference or court action.

Applicants respectfully submit that this argument is inappropriate to the Applicants' point (emphasis in original):

"In law, a 'presumption' is an understanding that controls only until rebutted by some stated quantum of information, whereupon a burden of proof shifts to proponents of the presumed fact. Applicants have offered factual observations tending to show that Curry is inoperative."

While the Applicants did not expect the Examiner to literally declare Curry invalid on the record, their point remains that ample evidence is available for inoperativeness of the Curry patent (and hence validity of Applicants' claims at issue during the time frame of the above exchange) — thus in fact rebutting the presumption of validity. The Applicants agree with the Examiner that it would be proper to adduce such evidence in any of the proceedings such as enumerated in the Official Action.

In addition the Applicants most respectfully suggest that it is not clear whether the argument above-reproduced from the Official Action exhausts all of the postures in which invalidity can be determined — or in which evidence thereof may be introduced. For example it may be proper to adduce such evidence on Appeal within the PTO.

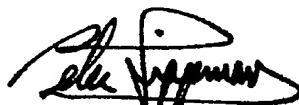
In any event, Applicants respectfully submit that assertions of inoperativeness and invalidity are wholly proper in the context of the present prosecution.

#### Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner's favorable reconsideration and allowance of all the claims now standing in this case.

It is respectfully requested that, should there appear any further obstacle to allowance of the claims herein, the Examiner telephone the undersigned attorney to try to resolve the obstacle.

Respectfully submitted,



PETER I. LIPPMAN

Registration No. 22,835

Attorney for the Applicants

Law Office of Peter I. Lippman  
licensed to practice California law only  
17900 Mockingbird Drive  
Reno, Nevada 89506

February 25, 2008

TELEPHONE:  
775/677-8822